

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

TIMOTHY DIETZ,  
Plaintiff,

VS.

QUALITY LOAN SERVICE CORP. OF  
WASHINGTON;  
WELLS FARGO HOME MORTGAGE;  
WELLS FARGO BANK, N.A.,  
~~MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC.,~~  
MCCARTHY & HOLTHUS, LLP  
DOE DEFENDANTS 1 - 20  
Defendants.

Case No.: CV13 5948

## AMENDED COMPLAINT

TRIAL BY JURY DEMANDED

## COMPLAINT

This action rises from attempts to collect on a Note. This complaint will show that at all times material hereto Defendants agreed between and amongst themselves and in combination with

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1       each other and with various agents known and unknown as to each overt act in furtherance of  
 2       the conspiracy and enterprise to engage in unlawful actions for a common purpose to which:  
 3       to perpetrate a fraud and obtain unlawful possession of Plaintiffs Property. Plaintiff,  
 4       TIMOTHY DIETZ, Individually, hereby sues Defendant QUALITY LOAN SERVICE  
 5       CORP. OF WASHINGTON, for violations of the Fair Debt Collections Practices Act  
 6       (Hereinafter “FDCPA”), Washington Deed of Trust Act (Hereinafter “WDTA”), Defendant  
 7       WELLS FARGO HOME MORTGAGE for violations of the FDCPA, Breach of Contract,  
 8       WELLS FARGO BANK, N.A., for violations of the FDCPA, Breach of Contract,  
 9       MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., MCCARTHY AND  
 10       HOLTHUS, LLP for violations of the FDCPA, WDTA.

- 12       1. This is an action for damages and injunctive relief brought by Plaintiff for violations of  
 13       the FDCPA 15 U.S.C. § 1692 *et seq.*, the WDTA RCW § 61 *et seq.*, Breach of Contract.  
 14       Upon belief and information, Plaintiff contends that many of these practices are  
 15       widespread by the Defendants. Plaintiff intends to propound discovery to Defendants  
 16       identifying these other individuals who have suffered similar violations.
- 17       2. Plaintiff contends that the Defendants have violated such laws by repeatedly harassing  
 18       Plaintiff in attempts to collect an alleged but nonexistent debt.
- 19       3. All conditions precedent to the bringing of this action have been performed, waived or  
 20       excused.

#### 22       JURISDICTION AND VENUE

- 23       4. Jurisdiction of this court arises under 28 U.S.C. § 1331; 15 U.S.C. § 1692k, and  
 24       supplemental jurisdiction exists for the state law claims pursuant to 28 U.S.C. § 1337. 28  
 25       U.S.C. § 1331 and 28 U.S.C. § 1331.

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1 5. Venue is proper in this District pursuant to 28 U.S.C. § 1331. Venue is proper in this  
 2 District as the Plaintiff resides here, the Defendants transact business here, and the  
 3 conduct complained of occurred here.  
 4

6. ~~This is an action for damages which exceed \$5,000.00.~~

5  
 6 **PARTIES**

7 7. Plaintiff, TIMOTHY DIETZ, (Hereinafter “Mr. Dietz”), is a natural person and is a  
 8 resident of the State of Washington. Mr. Dietz suffers from Attention Deficit  
 9 Hyperactivity Disorder (ADHD) and has a difficult time with any tasks requiring extended  
 10 amounts of time. Mr. Dietz is protected under the Americans with Disabilities Act (ADA)  
 11 42 U.S.C. § 126.

12 8. Upon information and belief the Defendant, QUALITY LOAN SERVICE CORP. OF  
 13 WASHINGTON (Hereinafter “QLS”), is a ~~foreign~~ Washington Corporation, ~~authorized to~~  
 14 ~~do business in~~ licensed with the Washington State Business Licensing Service, with an  
 15 ~~offices located at 2141 5th Ave, San Diego, California 92101~~ 19735 10<sup>th</sup> Ave NE, Suite  
 16 N200, Poulsbo, Washington, 98370. Upon information and belief QLS is licensed as a  
 17 “Profit Corporation” with the State of Washington Business Licensing Service and  
 18 assigned a UBI number of 602367571. Upon information and belief QLS operates under  
 19 the direct guidance of Defendant MCCARTHY & HOLTHUS, LLP (Hereinafter  
 20 “McCarthy”). Upon information and belief, Kevin McCarthy is a Governing Person for  
 21 both QLS and McCarthy and Holthus, LLP, linking QLS and McCarthy and Holthus, LLP  
 22 together by a common fact.

24 9. Upon information and belief the Defendant, WELLS FARGO HOME MORTGAGE  
 25 (Hereinafter “WFHM”), is a ~~foreign~~ California Corporation, ~~authorized to do business in~~

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1        licensed with Washington State Business Licensing Service, with offices located at 1  
 2        Home Campus, Des Moines, Iowa, 50328. Upon information and belief WFHM  
 3        Registered Agent is Corporation Service Company, 300 Deschutes Way SW, Suite 304,  
 4        Tumwater, Washington, 98501. Upon information and belief WFHM does not have an  
 5        “Entity Type” identified with the State of Washington Business Licensing Service, and  
 6        assigned a UBI number of 601311007. Upon information and belief WFHM registration  
 7        on the Washington State Secretary of State website reflects an expiration date of April 30,  
 8        2005 and is also reflecting an inactive status date of August 1, 2005. Upon information  
 9        and belief WFHM is a subsidiary of Wells Fargo Bank, N.A.. Upon information and belief  
 10        WFHM interchangeably identifies themselves as and uses the name of Wells Fargo Bank,  
 11        N.A.. Upon information and belief WFB is licensed as a “Bank Corporation” with the  
 12        State of Washington Business Licensing Service and assigned a UBI number of  
 13        601742563. Upon information and belief WFB is a share holder in MERS and appears to  
 14        have ownership interests in MERS.

16        10. Upon information and belief the Defendant, WELLS FARGO BANK, N.A. (Hereinafter  
 17        “WFB”), is a ~~foreign~~ California Corporation, ~~authorized to do business in~~ licensed with  
 18        Washington State Business Licensing Service, with offices at 464 California St, San  
 19        Francisco, California 94104. Upon information and belief WFB Registered Agent is  
 20        Corporation Service Company, 300 Deschutes Way SW, Suite 304, Tumwater,  
 21        Washington, 98501. Upon information and belief WFB has a registered trade name with  
 22        the State of Washington Business Licensing Service of Wells Fargo (Auto Lease). Upon  
 23        information and belief, WFB holds ownership interests in Mortgage Electronic  
 24        Registration Systems, Inc.

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11. Upon information and belief the Defendant, ~~MORTGAGE ELECTRONIC~~  
 2 ~~REGISTRATION SYSTEMS, INC. (Hereinafter "MERS")~~, is a foreign Delaware  
 3 Corporation, not authorized to do business in Washington, with offices at ~~1818 Library~~  
 4 ~~Street, Reston, Virginia 20190.~~

12. Upon information and belief the Defendant, McCarthy and Holthus, LLP (Hereinafter  
 6 "McCarthy"), is a California Corporation, licensed with Washington State Business  
 7 Licensing Service to do business in Washington, with offices at 19735 10<sup>th</sup> Ave. NE, Suite  
 8 N-200, Poulsbo, WA 98370. Upon information and belief McCarthy is licensed as a  
 9 "Limited Liability Partnership" with the State of Washington Business Licensing Service  
 10 and assigned a UBI number of 602294065.

12. DOES 1-20 are for any parties currently unknown in which through discovery of these  
 13 proceedings becomes known as an affiliated entity or entity of interest in the matters set  
 14 herewithin.

15 **GENERAL ALLEGATIONS**

16. On September 26, 2008, Mr. Dietz executed an FHA Promissory Note [EXHIBIT A] for  
 17 \$192,375.00 with Hyperion Capital Group, L.L.C. (hereinafter "HCG") as the Lender,  
 18 secured by Mr. Dietz's Property. Mr. Dietz is the sole owner of the real property in  
 19 question.

20. Since Mr. Dietz is the lone signatory on this Note, the Note is a bearer instrument. MERS  
 21 is not a party to this Note and has no interest in this Note whatsoever.

22. Upon execution of this Note by Mr. Dietz, this Note was sent to HCG.

23. Unlike a non FHA Note which states in pertinent part:

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1        "I understand that the Lender may transfer this Note. The Lender or anyone who  
 2        takes this Note by transfer and who is entitled to receive payments under this Note  
 3        is called the "Note Holder."

4        Mr. Dietz's Note has no such language. Mr. Dietz's Note does state in pertinent part:

5        "[pg 1] Lender means {Hyperion Capital Group} and it's successors and assigns."

6        18. Blacks Law Dictionary (8<sup>th</sup> edition) defines the following:

7        "**Lender** - A person or entity from which something (esp. money) is borrowed."

8        "**Successor** - A corporation that, through amalgamation, consolidation, or other  
 9        assumption of interests, is vested with the rights and duties of an earlier  
 10        corporation."

11        "**Assignee** - One to whom property rights or powers are transferred by another. •  
 12        Use of the term is so widespread that it is difficult to ascribe positive meaning to  
 13        it with any specificity. Courts recognize the protean nature of the term and are  
 14        therefore often forced to look to the intent of the assignor and assignee in making  
 15        the assignment — rather than to the formality of the use of the term assignee — in  
 16        defining rights and responsibilities. — Also termed assign."

17        19. On September 26, 2008, Mr. Dietz executed a Deed of Trust [EXHIBIT B] with HCG as  
 18        the Lender, securing property commonly known as 2503 34<sup>th</sup> Ave, Longview, Cowlitz  
 19        County, Washington, 98632, and said Deed of Trust was recorded into the records of  
 20        Cowlitz County on October 03, 2008, under Recording Number 3378077. Said property is  
 21        Mr. Dietz's primary resident.

22        20. After execution of the Deed of Trust, the Deed of Trust was sent to MERS causing a  
 23        bifurcation of the Note and the security instrument.

24        21. Mr. Dietz's loan was securitized shortly after closing.

25        22. Since Mr. Dietz is the lone signatory on this Deed of Trust, the Deed of Trust is a bearer  
 26        instrument.

27        23. MERS is described as a *nominee* for HCG and its successors and assigns. Page 2 states:

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“The beneficiary is Mortgage Electronic Registration Systems, Inc. (“MERS”) (solely as nominee for Lender, as hereinafter defined, and Lender’s successors and assigns). MERS is organizing and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI, 48501-2026, tel. (888) 679-MERS.”

24. Although the Deed of Trust establishes MERS as the Beneficiary by its own self imposed admissions, MERS is not making any contribution worthy of this designation. Paragraph 2 of MERS Terms and Conditions [EXHIBIT G] states in pertinent part:

“...MERS shall serve as mortgagee of record with respect to all such mortgage loans solely as a nominee, in an administrative capacity, for the beneficial owner or owners thereof from time to time. MERS shall have no rights whatsoever to any payments made on account of such mortgage loans, or to any mortgaged properties securing such mortgage loans. MERS agrees not to assert any rights (other than rights specified in the Governing Documents) with respect to such mortgage loans or mortgaged properties...”

25. MERS has ruled out any entitlement to Mr. Dietz's payments. This also means that MERS cannot qualify as *Lender* under ¶ 1 of Plaintiff's Note.

26. On May 17, 2011, an alleged assignment of Deed of Trust dated May 05, 2011 [EXHIBIT C], from MERS, as nominee for HCG, to WFB was recorded into the records of Cowlitz County under Recording Number 3436945.

27. The Assignment of Deed of Trust recorded as Recording Number 3436945 was recorded while the alleged debt was under default and had been in default since February 1, 2009.

28. The alleged Assignment of Deed of Trust recorded as Recording Number 3436945 is false and misleading.

29. The signer of this first MERS Assignment, Amy Toske, is acting as Assistant Secretary.

This Signer is a MERS Certifying Officer. At the time of the signing Amy Toske was also a full time employee of *and officer* of Wells Fargo Home Mortgage, which was and has

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1        been servicing this loan. This servicer appointed this MERS Certifying Officer to this  
 2        position and is totally responsible for all acts that they perform.

3        30. On May 18, 2011, an alleged assignment of Deed of Trust dated May 16, 2011 [EXHIBIT  
 4        D], from MERS, as nominee for HCG, to WFB was recorded into the records of Cowlitz  
 5        County under Recording Number 3437015.

6        31. The alleged Assignment of Deed of Trust recorded as Recording Number 3437015 is false  
 7        and misleading.

8        32. The signer of the second MERS Assignment, Mark Lee, is acting as Assistant Secretary.  
 9        This Signer is a MERS Certifying Officer. At the time of the signing Mark Lee Toske was  
 10        also a full time employee of *and officer* of Wells Fargo Advisor, LLC. At the time of the  
 11        signing Mark Lee was also a registered Government Securities Broker. The servicer,  
 12        WFHM appointed this MERS Certifying Officer to this position and is totally responsible  
 13        for all acts that they perform.

14        33. This standard Resolution Appointing a MERS Certifying Officer gives them authority to  
 15        “assign the lien of any mortgage loan naming MERS as the mortgagee ... if the mortgage  
 16        loan is registered on the MERS System.” Both Amy Toske and Mark Lee have exercised  
 17        this authority in favor of WFB.

18        34. This standard MERS Resolution further allows a MERS Certifying Officer “to take any  
 19        such actions and execute such documents as may be necessary to fulfill the Member’s  
 20        *servicing obligations* to the beneficial owner of such mortgage loan.”

21        35. Assigning the full beneficial interest of a security instrument is *not* a servicing obligation.  
 22        This can only be done by a party holding *full beneficial interest*. Neither the mortgage  
 23        servicer nor MERS holds any ownership interest in Plaintiff’s loan.

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1 36. MERS Certifying Officers are getting their instructions from the mortgage servicer, and  
 2 the ladder of authority stops there.

3 37. Under terms of the security instrument, MERS could not hold any ownership interest in  
 4 Plaintiff's property. The best scenario for MERS was to hold legal title on behalf of  
 5 someone else, namely the Lender, their successor or assign.

6 38. The MERS Assignments state that MERS could be acting on behalf of HCG, its successor  
 7 or its assign. Since MERS can only act as a nominee, it must disclose its specific source of  
 8 authority. This foundational fact cannot be left to speculation.

9 39. Since no specific source of authority is disclosed, we are left to conclude that MERS is  
 10 acting on its own behalf or under the mortgage servicer's direction. In both cases, this  
 11 exercise of authority is rendered void by terms in the Deed of Trust as well as by its own  
 12 Membership Terms and Conditions.

13 40. These MERS Assignments to WFB rely upon a succession of legal conclusions  
 14 camouflaged as facts. These legal conclusions are: (1) that MERS has authority to  
 15 functionally exercise the powers of a beneficiary on both May 5, 2011, and May 17, 2011,  
 16 in a nominee capacity without disclosing its source of authority; (2) on both May 5, 2011,  
 17 and May 17, 2011, MERS has the power to convey this full beneficial interest to its  
 18 recipient; (3) MERS has the power to transfer money owed on Plaintiff's Note on both  
 19 May 5, 2011, and May 17, 2011, to an assignee. These legal conclusions are all false.

20 41. Pursuant to RCW § 62A.3-308(a), Plaintiff challenges the authenticity and legitimacy of  
 21 MERS to effect any change or transfer to the beneficial ownership of Plaintiff's Deed of  
 22 Trust and Note. RCW § 62A.3-308(a) states:

23     "In an action with respect to an instrument, the authenticity of, and authority to  
 24 make, each signature on the instrument is admitted unless specifically denied in

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1       the pleadings. If the validity of a signature is denied in the pleadings, the burden  
 2       of establishing validity is on the person claiming validity, but the signature is  
 3       presumed to be authentic and authorized unless the action is to enforce the  
 4       liability of the purported signer and the signer is dead or incompetent at the time  
 5       of trial of the issue of validity of the signature. If an action to enforce the  
 6       instrument is brought against a person as the undisclosed principal of a person  
 7       who signed the instrument as a party to the instrument, the plaintiff has the burden  
 8       of establishing that the defendant is liable on the instrument as a represented  
 9       person under RCW 62A.3-402(a).”

10      42. In the security instrument, MERS is given the power to foreclose and sell *Plaintiff's*  
 11     property. This term engages the Statute of Frauds. RCW § 64.04.010 applies the Statute of  
 12     Frauds to every conveyance of real property, and states:

13       “Every conveyance of real estate, or any interest therein, and every contract  
 14       creating or evidencing any encumbrance upon real estate, shall be by deed:  
 15       PROVIDED, That when real estate, or any interest therein, is held in trust, the  
 16       terms and conditions of which trust are of record, and the instrument creating such  
 17       trust authorizes the issuance of certificates or written evidence of any interest in  
 18       said real estate under said trust, and authorizes the transfer of such certificates or  
 19       evidence of interest by assignment by the holder thereof by a simple writing or by  
 20       endorsement on the back of such certificate or evidence of interest or delivery  
 21       thereof to the vendee, such transfer shall be valid, and all such assignments or  
 22       transfers hereby authorized and heretofore made in accordance with the  
 23       provisions of this section are hereby declared to be legal and valid.”

24      43. The Statute of Fraud requires; (1) a writing relinquishing the last recorded owner's interest  
 25     in the security instrument; and (2) this writing must be signed by an authorized officer of  
 1       the owner. When formalities for the Statute of Frauds are followed, the new owner  
 2       acquires the original Lender's *contractual relationship* with the borrower. This is known  
 3       as *borrower approved interest in land*. Foreclosure statutes require the acquisition of the  
 4       *borrower approved interest in land* as a pre-requisite for asserting the *statutory power of*  
 5       *sale*. If this *borrower approved interest in land* is not acquired, foreclosure cannot be  
 6       pursued.

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1       44. MERS has never acquired the borrower's approved interest in land, because the  
 2       formalities of the statutes of frauds were never followed. There is not even a signature on  
 3       the Deed of Trust confirming a relationship between the original Lender and MERS. As a  
 4       result, MERS has not acquired the original Lender's contractual relationship with the  
 5       borrower and the *borrower approved interest in land*. MERS cannot convey an interest  
 6       that it never acquired.

7       45. RCW § 62A.3-203 addresses the transfer of a *bearer instrument* by a person other than its  
 8       issuer by a person other than its issuer for the purpose of giving another person the right to  
 9       enforce its terms. This statute is relevant because Plaintiff's Note and Deed of Trust are  
 10       bearer instruments. Every MERS assignment is a prelude to enforcement.

11       46. RCW § 62A.3-203 (b) dictates what must take place when a bearer instrument is  
 12       transferred for the purpose of enforcement and states in relevant part:

13       “Transfer of an instrument, whether or not the transfer is a negotiation, vests in  
 14       the transferee any right of the transferor to enforce the instrument, including any  
 15       right as a holder in due course, ....” [Emphasis added]

16       47. Pursuant to ¶ (b) of RCW § 62A.3-203, ownership rights in land are also subject to  
 17       principles of property law independent of Article 3 of RCW § 62A. Because of special  
 18       safeguards in the form of recording statutes, the owner of an interest in land must prove  
 19       *rightful possession*. This means that an assignor must prove that their prior holder was  
 20       endowed with the *full beneficial interest*.

21       “Because the transferee's rights are derivative of the transferor's rights *those*  
 22       *rights must be proved*. The instrument, by its terms, is not payable to the  
 23       transferee and the transferee must account for possession of the unindorsed  
 24       instrument by proving the transaction through which the transferee acquired it.”

25       [Emphasis added]

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1       48. By stipulating for an unindorsed instrument, a seller must prove the transaction through  
 2       which it was acquired, this comment is specifically referring to the contractual  
 3       relationship with the borrower and the borrower approved interest in land is bundled and  
 4       inextricably intertwined with that contractual relationship. This comment is also  
 5       referencing proof that the original holder of this contractual relationship has relinquished  
 6       this contractual interest in the seller's favor. These terms are all direct references to the  
 7       statutes of frauds.

8       49. RCW § 62A.3-203(d) sets forth the rule of law that if anything less than the entire  
 9       beneficial interest is conveyed; the transferee can receive no greater interest than that  
 10       which was held by the transferor. This rule of law applies to the MERS assignment on  
 11       May 5, 2011 and then again on May 16, 2011. WFB cannot receive any greater interest  
 12       than MERS is in the position to transfer. The true holder of this ownership interest in land  
 13       cannot be ascertained from terms in this MERS assignment. If a holder of a beneficial  
 14       interest cannot be established, the interest being conveyed is also illusory and inadequate  
 15       for enforcement.

16       50. In addition, MERS is barred by its membership rules from acquiring any beneficial  
 17       interest for a property posted on its registry.

18       51. MERS cannot prove that it holds rightful possession of the *full* beneficial interest in  
 19       Plaintiff's instruments. MERS cannot even prove that it holds any beneficial interest  
 20       whatsoever in Plaintiff's Note and Deed of Trust. Three problems are presented, and each  
 21       can be independently fatal. (1) It has not satisfied the full beneficial interest test imposed  
 22       by RCW § 62A.3-203 (b) and (d). (2) Its failure to follow formalities imposed by the  
 23       statute of frauds subjects it to the deterrent in this law and renders the transfer invalid. (3)

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1       Last but not least, it has not specified the source of authority directing them to take this  
2       action.

3       52. On February 21, 2012, an alleged Appointment of Successor Trustee dated February 10,  
4       2012 [EXHIBIT E], from WFB to QLS was recorded into the records of Cowlitz County  
5       under Recording Number 3451510.

6       53. As Substitute Trustee, it is understood that QLS should be receivinges instructions from  
7       WFHM.

8       54. Because of the operating environment of WFHM, the Trustee responsible for the  
9       foreclosure will customarily prepare this form, essentially self appointing themselves.

10      55. This type of practice should constitute a breech of good faith.

11      56. In ¶ 20, titled *Substitute Trustee*, Plaintiff's Deed of Trust states:

12       "In accordance with applicable law, Lender may from time to time appoint a  
13       successor trustee to any Trustee appointed hereunder who has ceased to act.  
14       Without conveyance of the property, the successor trustee shall succeed to all the  
15       title, power and duties conferred upon Trustee herein and by applicable law."

16      57. Blacks Law Dictionary defines "cease" as:

17       "To stop, forfeit, suspend, or bring to an end."

18      58. The Trustee on Mr. Dietz's Deed of Trust is Cowlitz County Title Company. There is no  
19       recorded evidence that indicates that Cowlitz County Title Company has ever ceased to  
20       act.

21      59. Through legal trickery, QLS was chosen and appointed by WFB to act on WFB behalf,  
22       and together they conspired to take possession of Mr. Dietz's property. This is in direct  
23       conflict with QLS "duty of good faith" as required by Washington's RCW § 61.24.010(4)  
24       which states:

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1        "(4) The trustee or successor trustee has a duty of good faith to the borrower,  
2        beneficiary, and grantor."

3        60. In connection with the collection of an alleged debt, QLS sent written communication  
4        [EXHIBIT H] to Mr. Dietz on or about July 27, 2012. QLS stated, in relevant part, as  
5        follows:

6        "THIS NOTICE IS SENT FOR THE PURPOSE OF COLLECTING A DEBT.  
7        THIS OFFICE IS ATTEMPTING TO COLLECT A DEBT ON BEHALF OF  
8        THE HOLDER AND OWNER OF THE NOTE. ANY INFORMATION  
9        OBTAINED BY OR PROVIDED TO THIS COMPANY OR THE CREDITOR  
10       WILL BE USED FOR THAT PURPOSE."

11       61. This communication from QLS does not state that this is from a debt collector contrary to  
12       U.S.C. 1681e.

13       62. The total amount of the alleged loan as indicated on the enclosed Debt Validation Notice  
14       is \$219,912.46.

15       63. Mr. Dietz has disputed this debt with QLS.

16       64. This communication from QLS is asking Mr. Dietz to remit payment of monies to either  
17       QLS or WFB.

18       65. The communication from QLS alleges WFB to be the new owner of an alleged Note.

19       66. WFB had a duty under 15 U.S.C. § 1641(g), not later than 30 days after the date on which  
20       a mortgage loan is sold, to notify the Mr. Dietz in writing of such an event. WFB breeched  
21       that duty.

22       67. This communication from QLS included a beneficiary declaration alleging to have  
23       satisfied the requirements of RCW § 61.24.031. This declaration was signed by Deirice  
24       Hemphill as Beneficiary's/authorized Agent. Deirice Hemphill has never attempted to  
25       contact Mr. Dietz nor does she have first hand knowledge of any attempts to contact Mr.  
26       Dietz as required at § 61.24.031.

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1 68. There are also requirements that have to be met under ¶ 9(d) of the Deed of Trust and  
 2 there has been non-compliance with this section. It states:

3 “¶ 9(d) In many circumstances regulations issued by the Secretary will limit  
 4 lender's rights, in the case of payment defaults, to require immediate payment in  
5 full and foreclose if not paid. This security instrument does not authorize  
6 acceleration or foreclosure if not permitted by regulations of the Secretary.”

7 69. Lenders have an incentive to participate in the HUD-insured mortgage program and to  
 8 receive a significant benefit from the program because the loans are virtually risk free due  
 9 to the federal government guarantee. It would be inconsistent with both the spirit and  
10 purpose of the HUD program and with the equitable doctrine of clean hands to allow  
11 lenders to accept the benefits of the program while ignoring the features which distinguish  
12 it from traditional mortgages.

13 70. 24 U.S.C. § 203.604 states in relevant part:

14 “(b) The mortgagee must have a face-to-face interview with the mortgagor, or  
15 make a reasonable effort to arrange such a meeting, before three full monthly  
16 installments due on the mortgage are unpaid. If default occurs in a repayment plan  
17 arranged other than during a personal interview, the mortgagee must have a face-  
to-face meeting with the mortgagor, or make a reasonable attempt to arrange such  
18 a meeting within 30 days after such default and at least 30 days before foreclosure  
19 is commenced...”

20 “(d) A reasonable effort to arrange a face-to-face meeting with the mortgagor  
21 shall consist at a minimum of one letter sent to the mortgagor certified by the  
22 Postal Service as having been dispatched. Such a reasonable effort to arrange a  
23 face-to-face meeting shall also include at least one trip to see the mortgagor at the  
24 mortgaged property...”

25 71. Mr. Dietz has no contractual obligation to pay Defendants.

72. This communication from QLS provided Mr. Dietz with the disclosures required pursuant  
 23 to 15 U.S.C. § 1692g(a) in an improper manner. QLS stated, in relevant part, as follows:

25 “Unless you notify this office within 30 days after receiving this notice that you  
 26 dispute the validity of the debt or any portion thereof, this office will assume this  
 27 debt is valid. If you notify this office within 30 days after receiving this notice,

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1 this office will obtain verification of the debt and mail you a copy of the  
 2 verification. If you request this office in writing within 30 days after receiving this  
 3 notice, this office will provide you with the name and address of the original  
 creditor, if different from the current creditor.”

4 73. As of the date of this letter, HCG was no longer doing business.

5 74. On or about August 4, 2012, Mr. Dietz sent a notice of dispute letter [EXHIBIT I] to QLS.

6 75. On August 29, 2012, a Notice of Trustee’s Sale [EXHIBIT J] was recorded into Cowlitz  
 7 County Records under Recording Number 3462652 setting a sale date of December 28,  
 8 2012.

9 76. On or about August 30 28, 2012, and at other times since, Mr. Dietz has received written  
 10 communication [EXHIBIT K] from QLS, continuing attempts to collect an alleged but  
 11 nonexistent debt. Under 15 U.S.C. § 1641g collection of any disputed debt must cease  
 12 until such debt is validated.

13 77. Communication related to debt collection does not become unrelated to debt collection  
 14 simply because it also relates to the enforcement of a security interest. A “debt” is still a  
 15 “debt” even if it is secured.

16 78. Since Mr. Dietz was in default at the time the debt was allegedly acquired, Defendants fall  
 17 under the definition of debt collectors as defined by the FDCPA. 15 U.S.C. § 1692a(6)  
 18 reads in relevant part;

19 “As used in this title-

20 (6) The term “debt collector” means any person who uses any instrumentality  
 21 of interstate commerce or the mails in any business the principle purpose of  
 22 which is the collections of any debt, or who regularly collects or attempts to  
 23 collect, directly or indirectly, debts owed or due or asserted to be owed or  
 24 due another. Not notwithstanding the exclusion provided by clause (F) of the  
 25 last sentence of this paragraph, the term includes any creditor who, in the  
 process of collecting his own debts, uses any name other than his own  
 which would indicate that a third person is collecting or attempting to  
 collect such debts. For the purpose of section 8708(6), such terms also  
 includes any person who uses any instrumentality of interstate commerce or

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1 the mails in any business the principle purpose of which is the enforcement  
 2 of security interests. The term does not include-

3 (F) any person collecting or attempting to collect any debt owed or  
 4 due or asserted to be owed or due another to the extent such  
 5 activity  
 6 (iii) concerns a debt which was not in default at the time it  
 7 was obtained by such person."

8 79. On or about September 8, 2012, Mr. Dietz received written communication from QLS  
 9 [EXHIBIT L] alleging to be a Validation of Debt.

10 80. This communication lacked the required disclosures required by the FDCPA.

11 81. In this correspondence QLS alleges that they are the duly appointed Trustee on the Deed  
 12 of Trust. That is false as they were appointed as Substitute Trustee by WFB.

13 82. The alleged validation from QLS has failed as a validation of debt for several reasons.

14 83. The alleged validation from QLS fails to establish a connection of an alleged debt  
 15 between WFHM or WFB and Mr. Dietz.

16 84. The alleged validation from QLS failed to provide the name and address of the original  
 17 creditor. This is required as stated in 15 U.S.C § 1641g.

18 85. The endorsements on the alleged Note, provided by QLS, are false, fraudulent and  
 19 unauthorized.

20 86. There is an alleged endorsement from Doris Wilcoxon signing as Assistant Vice President  
 21 for HCG on the Note. There is no way of knowing when this endorsement was attached to  
 22 the Note since it is not dated. It is also difficult to know if this endorsement has been  
affixed to the original Note or a copy of the Note.

23 87. WFHM considers Washington State a copy State, meaning that Washington State does not  
 24 require original loan documents to proceed with any type of foreclosure. Simply put, those  
 25 who are processing and signing documents are not doing so with original documents.

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